Children's rights as residual social policy in Nicaragua: state priorities and the Code of Childhood and Adolescence

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ABSTRACT   *In enacting a legislative Code of Childhood and Adolescence in 1998, the Nicaraguan state formally endorsed the ideal of children's rights as being a central concern of public policy. Yet, the state has done little to fulfil this commitment. In part this is the result of severe fiscal constraints, which have led to reduced public expenditures and the downsizing of social services, especially those directed towards children and youth. In part, however, there are also indications of state reluctance to actively implement the principles of change as outlined by the Code. This has been reflected in the government's reactionary response to fears of growing youth violence, and its unwillingness to collaborate with local civic groups in dealing with youth crime. We surmise therefore that, while the Code may have served to enhance state legitimacy, the cause of children's rights remains a residual policy issue in Nicaragua.*

> Rights cannot be safeguarded without meeting the material needs of people and, when talking specifically about children's rights, without dealing with the structural causes of children's vulnerability.[1]

The UN Convention on the Rights of the Child (CRC), approved by the General Assembly in 1989, has proven to be a watershed for the global human rights movement. Ratified by more than 170 countries, the CRC not only represents a major ideological shift in the way all signatory states formally regard the status and welfare of children and youth (those below the age of 18 years), but it obliges these states to take all possible steps to legislate what are deemed to be the inalienable social and legal rights of all children under their jurisdiction. As outlined in the CRC, although the provisions of child rights legislation can vary from one country to another, the common purpose must be to revoke traditional notions of children as objects dependent on discriminatory adult authority and instead foster the ideal of children as subjects entitled to special constitutionally guaranteed rights. All states are thus enjoined to regard the protection of children's rights as a priority of governance, allocating the maximum public

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resources possible to this end. In addition, states are challenged to engage organs of civil society and international co-operation in supporting children's rights.

Despite these laudable sentiments, there have been no illusions about the formidable task of implementing the provisions of the CRC, especially in poor countries where the institutions of governance are weak and under-resourced. This is particularly evident in Nicaragua which, under the Sandinista regime, was an early signatory nation and had championed the cause of civil rights during the Sandinista revolution of the 1980s. In accordance with its obligations under the CRC, in 1998 the Nicaraguan state formally passed a national legislative charter on children's rights, the Code of Childhood and Adolescence (Código de la Niñez y la Adolescencia, henceforth referred to as 'the Code').[2] Recapitulating the principles and objectives of the CRC, the Nicaraguan Code stipulates that all subsequent policies and programmes affecting the welfare of children are to be based on the principles of protecting and promoting the rights of all Nicaraguan children.

Yet, despite the aura of legality that the Code has accorded to the discourse of children's rights, the post-revolutionary Nicaraguan state has had neither the fiscal power nor the political and ideological will to enforce most of the provisions of the Code. Constrained by a weak economy, by debilitating international debt and by the destruction of Hurricane Mitch in 1998, the central state in Nicaragua is simply not availed of the resources and institutional capacity necessary to advance children's rights as an imperative of public policy. In addition, however, as we will argue in this paper, a resurgence of populist social conservativism, coupled with government wariness of a non-governmental sector that has frequently been critical of state policies, underlies the reluctance of government authorities to act in full compliance with the articles and principles of the Code. This has been exemplified by the government's recent approach in responding to popular fears about youth crime and urban youth gangs. We surmise therefore that, while the Code may have served to enhance state legitimacy in Nicaragua, the question of children's rights remains a residual public policy issue.

Nicaragua's Code of Childhood and Adolescence: the language of radical policy change

Throughout most of the twentieth century Nicaraguan policies and programmes pertaining to impoverished and otherwise disadvantaged children were framed by principles that were articulated in the Law for the Protection of Minors (Ley Tutelar de Menores). As elsewhere in Latin America, this statute was rooted ideologically in the so-called doctrine of 'irregular situations' that classified youngsters into two pseudo-sociological categories. On one side of the ideological ledger, those who were cared for by the institutions of family and school were regarded as 'mainstream' *children*. In stark contrast, those who had abandoned school and who lacked employment and tangible family support were deemed to be *minors* living in 'irregular' situations that were seedbeds of social deviance.[3] Sustained by popular perceptions about the dangers of seemingly aimless and dispossessed minors, the central tenet of the 'doctrine of irregular

situations' was the need to protect society from juvenile delinquency. Accordingly, irrespective of the detrimental circumstances in which many children were growing up, 'minors' who were regarded as anti-social or dangerous could be arbitrarily detained and consigned to periods of prolonged custody in orphanages and reformatories that were supported mainly by the state and the Catholic Church. The emphasis of state intervention was to contain and, if possible, 're-educate' delinquent youth rather than to redress the inequitous socioeconomic conditions in which they were living.[4]

During the 1980s, however, this pejorative perspective of disadvantaged children and youth began to be seriously challenged. In Nicaragua the Sandinista revolution had swept aside the oligarchic Somoza regime, and throughout Latin America social movements advocating democracy and human rights had attained substantial political influence. Concurrent to these events, a groundswell of international advocacy led various governments and NGOs to draft a comprehensive Convention on the Rights of the Child that would give paramount importance to the best interests of all children (Article 3). In 1989 this landmark in international human rights legislation was unanimously adopted by the UN General Assembly. In recognising children's special needs as inalienable rights to be guaranteed under law, the CRC became the legal and moral reference point for advocates of child rights legislation in all signatory countries.

Following upon the commitment of signatory countries to 'undertake all appropriate legislative, administrative, and other measures' for the implementation of the CRC (Article 4), the state in Nicaragua along with an eclectic array of NGOs and international human rights groups embarked on a process of formulating a constitutional charter on children's rights. This proved to be a lengthy and sometimes contentious process, hampered by preoccupations with a stagnant economy, crippling public debt and the resolution of serious political differences in the aftermath of revolution and war. Nevertheless, through persistent deliberation and sustained civic pressure, the National Assembly and the executive branch of government formally enacted the Code of Childhood and Adolescence in early 1998.

As a legal statute designed to impinge on all youth-related policies and programmes, the Code charts a course for fundamental changes in the conditions and treatment of Nicaragua's many destitute children. In particular, three core principles summarise the universality of children's constitutive social and legal rights (Articles 1–11):

- State and civil society must refrain from stigmatising impoverished children and adolescents as living in 'irregular situations' and rendering them subject to arbitrary detention and treatment.
- All children and adolescents, regardless of home and community background, are entitled to equal treatment before the law and to equal and full access to basic social services.
- Responsibility for application of the principles of the Code must be shared by organs of the state and civil society at national and municipal levels in conjunction with families.

Passage of the Code into law was an important step in legitimising the discourse

of children's rights in Nicaragua. Drawing upon the principles of the CRC, the articles of the Code focus on the inherently moral and legal concept of *rights* as opposed to the utilitarian notion of *basic needs*. Not only does the Code propose a departure from practices derived from the hoary doctrine of 'irregular situations', but it stipulates that the protection and promotion of the constitutive rights of all children and youth are to be priorities of governance. The language of the Code thus represents a new vision concerning the status of all children. Rather than being viewed as 'objects' who are entirely dependent on the arbitrary powers of family, school, police and the judiciary, young people are henceforth to be regarded as 'subjects' who are availed of all social and legal entitlements that are their proper due as full members of society. This implies the necessity of new forms of relationships between established societal institutions and the world of children and adolescents. It also necessitates the universal provision of accessible social services so as to facilitate children's healthy psychosocial development.

In approving this comprehensive legislative bill, the Nicaraguan state symbolically assented to act as the guarantor of these rights. Accordingly, ample resources must be allocated to those social sectors that have a direct impact on children's welfare—notably education, health care, family assistance and labour protection (Article 61). This requires not only co-ordinated planning and action across all levels and sectors of government, but it entails effective collaboration with organs of civil society. For, while the state is expected to lead in promulgating policies and programmes designed to prioritise the development of all children, the Code likewise emphasises the engagement of all sectors of civil society in supporting children's welfare (Article 56). Co-operation between state and civil society is therefore imperative for the full application of the Code.

In adopting what was clearly pathbreaking legislation, the state in Nicaragua became formally committed to ensuring that the welfare of all children was a priority of public policy and social programmes. Yet, five years after passage of the Code into law, the majority of Nicaragua's youthful population, which comprises around half its 5.2 million people, continue to suffer social and economic destitution.[5] While infant and child mortality rates decreased between 1990 and 2000, from 40 to 31 per 1000 infants (aged 0–1 years) and from 50 to 40 per 1000 children (aged 1–5 years), current rates are nonetheless considered to be higher than in most other Latin American countries.[6] Malnutrition and ill health among children under five years old are likewise commonplace and more prevalent than elsewhere in Latin America. UNICEF recently estimated that one in four children in Nicaragua is undernourished, and that in some urban areas half of all children are inadequately fed.[7] Female teen pregnancy rates are high, with an estimated one in four Nicaraguan girls aged 15–19 either pregnant or having given birth, a rate that is above the average in Latin America.[8] Likewise, an estimated 30% of maternal mortalities, 26% of abortions, and 30% of sexually transmitted diseases occur among girls under 19 years old.[9] Official school enrolment rates indicate that 44% of youth aged 13–17 have either dropped out or never attended school.[10] Many children and adolescents work as low wage labourers or languish in situations of underemployment, and many others are engaged in prostitution, drug trafficking and various other forms of extra-legal activity.[11] While statistics on youth crime are sketchy, indications are that almost

one in 10 prison inmates in Nicaragua are under 18 years old.[12]

In the light of this evidence it is clear that the state in Nicaragua has been unable to reverse the penurious living conditions of vast numbers of children. Aquiescence to the language of radical policy change has not translated into an impetus for ensuing transformation of the structures and processes that would enhance the welfare of indigent children. Instead the cause of child rights has remained a peripheral public policy issue in Nicaragua. That this is so is essentially a function of the fiscal weakness of the Nicaraguan state, which has resulted in a serious curtailment of public social services, as well as an inherent reluctance to pursue actions that are congruent with the discourse of radical change.

Legislative change and social policy reform as political adjustment in Latin America

In order to frame those recent developments in Nicaragua which have under-scored the limitations of the Code of Childhood and Adolescence and rendered the ideal of children's rights as an essentially peripheral social policy issue, it is useful to consider the nature of the state and its evolving relation to civil society in the overall context of Latin America. While state structures and procedures differ from one country to another, and while multiple definitions derive from different theoretical orientations and historical circumstances, we regard the state as a 'universally recognized political and economic unit' that exercises power through normative and coercive means.[13] The main function of the state is to strive to control economic and social interactions within established geographic boundaries. The institutions of the state, therefore, are primarily concerned with achieving economic and political security, and ensuring hegemony over the dynamics of sociopolitical intercourse.[14] In recent years, however, throughout Latin America this ability to maintain control has been constrained by prevailing national and international market forces, and by the fragile cohesiveness and legitimacy of national governments. Since states are neither monolithic nor impregnable, those who govern through the organs of the state are invariably engaged in an ongoing struggle for power and security, among themselves through the processes of party politics as well as with diverse non-governmental civic groups that are capable of challenging state authority.[15] Confronted with the necessity of perpetually striving to enhance state legitimacy and to maintain political power, the ability of governing elites to counter opposition through unilateral force and intimidation has increasingly given way to actions designed to mollify challenges to their authority and to accommodate currents of change.[16]

This shift in the modalities of governance in Latin America, what some suggest is a process of incremental democratisation,[17] and others argue is a strategy of hegemonic adjustment,[18] has followed years of sustained economic crisis and political instability that have weakened the legitimacy of central states. From the mid-1980s a decade of chronic budget deficits and immense national debts forced governments to slash public expenditures and to reduce the size of state bureaucracies. Simultaneously, in the wake of international disillusion with command economies and state-led development programmes, Latin American

governments were compelled to yield to pressures emphasising the liberalisation of markets and the incipient privatisation of publicly managed activities. Since these structural adjustment measures were imposed mainly at the behest of foreign creditors such as the IMF and the World Bank, governments in Latin America were confronted with the weakening of political authority. No longer able to generate resources and maintain financial solvency through the institutions of the state, the capacity of governing elites to dominate civic society through traditional forms of patronage was steadily eroded.[19]

This deterioration in state capacity facilitated the opening of political space to an array of civic associations. Galvanised by the severe social costs of economic crisis and structural adjustment, and buoyed by international interest in the mobilisation of civil societies as the route to greater democracy and more effective forms of governance, a growing multitude of NGOs, religious organisations, and local community groups undertook to challenge central states and the conventional modes of corporatist–clientelist governance.[20] Often beginning as sites of political mobilisation and protest, many of these civic groups have evolved into organised citizens' coalitions demanding constitutional rights and more participatory policy-making processes. By openly opposing central governments whose bases of support have diminished, civic movements throughout Latin America have initiated the negotiation and redefinition of state–society relations.[21]

For governing elites, contending with the diminution of their traditional foundations of power, and with political pressures emanating from diverse national and international sources, options for reasserting state authority and legitimacy have been stark. One approach has been simply to crush opposition through brute force. Yet this tactic has proven to exacerbate popular anger and to incite international condemnation that further undermines state legitimacy. Consequently, instead of rigid defensiveness as a way of responding to forces of civic opposition, throughout the 1990s governments in Latin America have increasingly demonstrated a cautious accommodation of civic demands for social change. Accordingly they have acceded to pressures for constitutional change and for greater civic participation in the formulation of social policy.[22]

Yet in the eyes of many critics, despite this semblance of commitment to social change, those in positions of power have rarely shown any genuine inclination actually to implement changes that threaten their vested interests.[23] From this perspective, although frequently compelled to acquiesce to ideals of progressive social transformation, political elites tend to do so as a form of hegemonic adjustment, the purpose being to maintain the authority of the state and their corresponding influence. Seldom does the incorporation of the language of radical change in legislation and social policy pronouncements signal a fundamental shift in their preoccupation to retain dominance over political and socioeconomic interactions. Instead, rhetorical state commitments to social justice and economic equity are little more than elitist ploys to depoliticise populist demands and reduce the likelihood that such demands will undermine central state authority.[24]

This notion of state accommodation of the discourse of progressive change as a deliberate and rather cynical means by which governing elites maintain their

hegemony rests on the assumption that central governments remain at once both relatively strong and monolithic. In contrast, a somewhat different contention is articulated by those who point to the fiscal weaknesses and fragile legitimacy of central governments. From this perspective, in the wake of economic crisis and subsequent structural adjustment measures, and the corresponding rise of civil society as a countervailing arena of political activity, central governments in Latin America increasingly comprise elements that derive their support from diverse interest groups advocating specific sectoral reforms.[25] In such circumstances governments have been more disposed to accommodating the discourse of radical social change and to giving *pro forma* assent to correspondingly supportive policies. Yet the very weaknesses that compel states to accede to the discourse of change also prevent them from marshalling the financial resources and political capital needed to *implement* fundamental social change. Instead, once past the enactment of legislation designed to legitimate ideals of structural reform, central state leadership is generally unable to divest public resources that are necessary for the realisation of proposed policies and programmes. Instead, hampered by limited budgets and competing political agendas, central governments divest responsibility for policy implementation to lower levels of governance and disparate organs of civil society.[26] In so doing, policy implementation is invariably transformed into a multitude of initiatives that are managed as discrete technical activities by institutions and social groups that otherwise have little previous collaborative experience. In these types of arrangements, without a substantial transfer of resources and a redistribution of power from the centre, the implementation of policy change and the application of progressive legislation tend to be severely curtailed.

In Nicaragua, despite official endorsement of the international CRC and the enactment of the national Code of Childhood and Adolescence, a combination of factors has militated against the state's fulfilment of its obligations as outlined in these charters. As we will now discuss, the children's rights agenda remains a residual policy issue in Nicaragua in large part because of the state's profoundly weak fiscal situation, but partly as well as a result of strong currents of social conservatism that resist the application of radical change.

Fiscal implosion and the erosion of social services for children

Since the demise of the Sandinista revolution at the end of the 1980s, Nicaragua's governing elites have been preoccupied with the management of economic crisis and a punishing foreign debt.[27] With little room for manoeuvre, the state in Nicaragua has had to submit to neoliberal conditionalities imposed by international creditors, most notably the IMF and the World Bank. This has led to a protracted series of fiscal austerity measures aimed at reducing per capita expenditures and downsizing social services. In so doing, contrary to its formal obligation to implement the provisions of the CRC and to undertake sweeping sectoral support for children's welfare as stipulated by the national Code, the state in Nicaragua has overseen a general decline in the availability and quality of social assistance for children and adolescents. This has been most evident in the sphere of education, the sector that is essential for the youngest members of society.

For over a decade total state expenditures on education have fallen steadily. Only in the area of primary schooling has government spending risen, yet this has been largely thanks to a concerted foreign aid agenda that has focused substantial financial and technical assistance towards achieving 'basic education for all'.[28] With the World Bank and other donors extending substantial capital support for an increase in basic education, the state in Nicaragua has had to augment recurrent expenditure on primary schools in order to cover the salaries of an expanding teaching force. From 1995 to 2000, therefore, average government spending per primary school pupil rose from the equivalent of US$40 to US$53. Yet during this same period, state spending for each secondary school student fell from an average of $30 to $20.[29] More telling has been the persistent drop in the proportion of the government's overall budget allocated to education. Despite the heightened profile of children's welfare that resulted from passage of the Code into law in 1998, total public spending on education has declined steadily. From 15.5% of total public spending in 1997, the government's financial allocation to education dropped to 11% in 1999.[30] Between 1998 and 2000 overall recurrent spending on public education fell from 4.2% to 2.7% of GNP.[31] In 2002, public expenditure on the entire formal education system (from primary through to tertiary levels) had again been reduced by $4 million from the previous year,[32] and in 2003 it has once more fallen by an estimated 10%.[33]

In an effort to justify as well as facilitate these budget reductions, the government has promoted a policy of educational decentralisation which ostensibly aims to expand local involvement in children's education and strengthen autonomous community 'ownership' of schools. Yet recent indications are that the most tangible effect of educational decentralisation has been the rise of school fees and other privately borne costs of children's education. According to Gershberg, for some families monthly school fees can 'easily be 50% of the family's household income'.[34] Not only does this contravene constitutional provisions stipulating both the compulsory and non-fee paying status of primary education—a condition reiterated in Article 43 of the Code—but the policy of promoting school autonomy, with its attendant increase of private costs, has actually served to dissuade many indigent families from sending their children to school.

Evidence of the numbers of children who are either not in school or have abandoned their schooling provides an indication of the difficulties many poor households have in paying basic school fees. In 1998 an estimated 1.1 million children and adolescents (about 25% of all who were eligible) were not enrolled in Nicaraguan schools. A year later, at the start of the school year (February), estimated non-enrolment had risen by 65 000.[35] Annual school drop-out rates have been equally disturbing, with official estimates ranging between 7% and 12% in most regions, but in some municipalities extending above 20%.[36] Among the country's adolescents (aged 13 to 18), some two out of every three are estimated either to have abandoned or never attended school.[37] For the vast majority of these youngsters, the prospects of future education and remunerative work are bleak.

Decentralisation and incipient privatisation of schooling have likewise taken a toll on the quality of public education in Nicaragua. While there is some evidence

that affluent children may have benefited from the expansion of private schooling, diminished state spending on education has augmented the burdens of school administrators, who frequently find themselves struggling to manage over-crowded schools that lack adequate pedagogical materials and equipment. Many schools have fallen into disrepair, and some have had to close because of serious deterioration.[38] Reductions in educational expenditures have also led to a fall in the real earnings of teachers, whose salaries rank far below those of their counterparts in neighbouring Guatemala, El Salvador and Panama.[39] Inevitably this has generated a decline in morale among public school teachers and has led to common instances of teacher moonlighting, absenteeism and extortion that further push poor children out of school.[40]

A host of other government bodies mandated to provide services for youth have experienced similar downsizing and deterioration. The Institute for Youth and Sport, previously an autonomous state entity responsible for youth leadership training and for the promotion of sports and recreation, was absorbed into the Ministry of Education in 1998. This resulted in the loss of full-time staff and a substantial reduction in its annual budget.[41] Likewise the Ministry of the Family, which is mainly responsible for the non-formal and vocational education of child labourers and the care of orphans and abused children, has experienced steady reductions in its annual operating budget and a corresponding decrease in full-time staff.[42] A similar process of incremental downsizing has occurred in the Ministry of Health. Reflecting a pattern of previous years, state spending on public health between 2001 and 2002 was estimated to have declined by $1 million.[43] At the Ministry of Labour, which is officially responsible for curbing the exploitation of children in the workplace, neither the funding nor the personnel have been sufficient to monitor and regulate conditions of child labour in Nicaragua.[44]

As resources for public services have continued to decline, the state in Nicaragua has had to rely heavily on perennial infusions of international aid. Between 1990 and 1998 total international aid to Nicaragua amounted to $5.2 billion, which was equal to 32.4% of the country's total GNP during these years.[45] In 2003 about 40% of Nicaragua's budgeted public sector expenditures have been derived from foreign aid.[46] In the education sector, almost half the Ministry of Education's budget is derived from foreign loans and donations, most of it directed to primary education.[47] Likewise, combined international aid accounts for an estimated 38% of the Ministry of Health's programme budget.[48] Programmes focusing on adolescent sexual and reproductive health, for example, have been fully funded by the UN Population Fund (UNPF). As a former director of the Ministry of Health's Department of Adolescence explained to one of the authors, 'The truth is, as a Ministry of Health, we don't have any specific [ministerial] funding for adolescent programs. We have developed actions [only] through projects supported by oganizations like UNICEF, PAHO [Pan-American Health Organization], and the UNPF'.[49] Similarly, non-formal education for child labourers and counselling programmes for young victims of drug abuse and sexual exploitation, although provided under the official auspices of the Ministry of the Family, are fully funded by UNICEF, the EU and other donors.[50] With respect to child labour, UNICEF and the International Labour Organisation (ILO)

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have taken the lead in accumulating information on children's working conditions and in creating a series of municipal level commissions aimed at monitoring and reducing the exploitation of children for profit.

It is clear therefore that, although the state in Nicaragua has acceded to the discourse of progressive change inherent in the Code of Childhood and Adolescence, it has continued on a path of gradual disengagement from the direct delivery and administration of social programmes, especially those that impinge on the welfare of children. Burdened by a severely restricted resource base and the inexorable demands of foreign creditors, it has scaled back its recurrent expenditures on public services. Although the influx of foreign aid has to some extent counterbalanced the paucity of reduced government services, aid is provisional and uncoordinated, and cannot compensate for the depletion of the public sector. Consequently, except for a wealthy elite and a gradually shrinking middle class for whom privatisation of social programmes appears to have translated into frequently better quality services, much of Nicaragua's population has experienced a steady decline in both the quality and the accessibility of basic social services.[51] In these circumstances of public sector penury, the government has effectively relinquished its capacity to provide leadership in promoting and protecting the social rights of all children and youth.

At the same time, however, while the constraints of a weak fiscal situation fuelled by an unforgiving economic climate and a sequence of natural disasters have undoubtedly undermined the capacity of the state to channel resources for essential social services, there also are indications that the central government in Nicaragua has little interest in living up to and promoting the principles of a child rights agenda. This has been manifest particularly in its reactionary and largely ineffectual approach to urban youth crime. As we shall now discuss, rather than adopting an approach grounded in the principles of collaboration and sensitivity to socioeconomic context, the government has responded to popular concerns about youth gangs largely on the basis of traditional ideological impulses.

The state Gang Plan as unilateral crime control

As outlined in the CRC and reasserted in Nicaragua's Code of Childhood and Adolescence, the existence of prolonged risks to the development of children undermines their basic right to social and legal protection. Clearly violence is one such risk. In tacit acknowledgement that much of the violence perpetrated by and on children is attributable to impoverished economic and social circumstances, a central principle of the Nicaraguan Code is that alternative living environments should be created that will facilitate the 'holistic', well rounded development of disadvantaged youth (Article 56). In addition, where juvenile delinquency is an immediate issue, sole reliance on arbitrary punishment and incarceration should give way to forms of restorative justice that will facilitate youth reintegration into the family and local social environment (Article 98). As further stipulated by the Code, such efforts should involve the state and civil society acting in concert.

Yet, as the government's recent effort to stem the rise of youth gangs in Managua has shown, there is little indication that the articles of the Code have generated major changes in state responsiveness to youth crime. Instead, as the

phenomena of youth gangs and rising gang violence have become focal points of public anxiety in Nicaragua's urban centres, the state in Nicaragua has relied on a reactionary policy of crime control that remains rooted in the 'doctrine of irregular situations'. This has been exemplified by the implementation of the government's Gang Plan in Managua, the nation's capital and the largest city in the country.

Fuelled by sensational stories in the popular press, concerns about gang violence in Managua have become acute in recent years. With over 60% of the city's adolescents out of school and either unemployed or engaged in low paid part-time employment,[52] many young males and (less visibly) young females have grouped themselves into neighbourhood gangs in lieu of any other type of legitimate social organisation available to them. Given the poverty of these youngsters and their dim prospects for education or sustainable work, and with virtually no access to organised recreation, gangs in the districts of Managua are inevitably associated with illegal and often violent activities, sometimes targeted at members of the general public, but often inflicted on other youth. The most common forms of youth violence involve property damage, robbery with intimidation, assaults and murder.[53]

In 1999 several gang-related incidents in Managua generated shrill media commentary. In July of that year, in an effort to allay fears about an epidemic of gang violence in the city, the government announced a plan for curbing gang activity and reducing levels of youth violence in Managua. Formally entitled the Integrated Development Plan for the Prevention of Juvenile Violence (el Plan de Desarrollo Integral contra la Violencia Juvenil), it was soon simply referred to as the Gang Plan. The promulgation of the Plan attracted considerable media coverage, for it appeared to demonstrate the government's avowed commitment to address fundamental issues underlying the rise of youth gangs and increased levels of youth violence. In fact, however, although the Plan made passing reference to the Code of Childhood and Adolescence, youth gangs and the problem of rising gang violence were portrayed first and foremost as threats to social order that had to be quelled. 'Youth is heading dangerously towards the road of violence and this has generated feelings of citizen insecurity.'[54] The main aim of the Gang Plan, therefore, was to clamp down on visible youth crime and thereby restore a sense of security among the urban populace. Although the Plan was couched in language that referred to the education and rehabilitation of young delinquents, it made no reference to the socio-economic antecedents of youth violence, nor did it outline a cohesive programme of social assistance for marginalised youth in the slums of Managua. The guiding principle of the Gang Plan was that of crime control.

Accordingly, police units were mandated to crack down on youth violence by arresting known gang leaders and indicting them for criminal offences. Within weeks of the announcement of the Plan, more than 400 adolescents in Managua, many under 15 years old, had been systematically rounded up and incarcerated by the police, most without judicial warrants. These actions directly contravened Article 95 of the Code, which stipulates that children under 15 years old cannot be arbitrarily arrested and imprisoned. It was only after protests from civic groups and parents that government authorities directed the police to release all

children under the age of 15 without pressing charges. Since then, however, police squads have continued to periodically raid various neighbourhoods in Managua, apprehending youth suspected of gang membership irrespective of their ages. While such tactics have led to the apprehension of various gang leaders and have served to demonstrate police attention to youth crime, they have completely failed to quash youth gangs and youth crime in Managua. According to recent police accounts, the estimated number of youth gangs has continued to rise and increasingly schools require police protection from gang incursions.[55]

Besides being an edict for the arrest and incarceration of youth gang leaders, the Gang Plan also outlined the need for preventive measures throughout the six major administrative districts of Managua.[56] Government officials working in each district were therefore enjoined to form Youth Violence Prevention Commissions in conjunction with representatives of NGOs and community groups. As stipulated in the formal text of the Gang Plan, these 'Prevention Commissions' were mandated to achieve three main objectives:

- to prevent the increase of youth violence in the districts of Managua;
- to decrease levels of citizen insecurity through collaborative actions of state institutions and local communities;
- to prevent dangerous youth activity by providing alternative occupational and recreational opportunities, and by encouraging moral, social and spiritual values among youth.[57]

While the district Commissions were expected to function autonomously, co-operation between municipal levels of government and local non-governmental associations was considered essential for success.

> The plan should be seen … as a plan of action in which not only the state intervenes, but also social institutions, unions, associations, municipalities, the church, the family, the community, and business people. Support from international agencies is also anticipated.[58]

In the months that followed the promulgation of the Gang Plan, the district Prevention Commissions were established and all gradually embarked on projects intended to engage out-of-school and unemployed youth, many of whom were identified as affiliated with neighbourhood gangs. Generally these ventures consisted of short-term technical training courses, recreational activities and consciousness-raising sessions involving youth, parents and community leaders. Superficially, at least, the activities of the Prevention Commissions constituted a promising, albeit incremental, response to youth delinquency and violence. As time progressed, however, it became clear that the anticipated membership of NGOs and community groups on the Commissions did not entail sharing in assessments of youth problems or discussing how best to intervene. Instead, chaired as they were by senior government officials, the Prevention Commissions were conducted essentially as executors of the government's Gang Plan. Inevitably, this was a situation that most NGOs refused to accept. As one NGO representative noted in hindsight:

> [We were invited] to go to the [Prevention Commission] meetings on occasion, but we were unable to become actively involved … I think they were really seeking to

co-ordinate only … and that is probably why we didn't feel very comfortable participating. They didn't ask us to play a decision-making role; they only asked us to support them in implementing projects.[59]

By early 2000 the Prevention Commissions had lost most of the non-governmental support which they had at first attracted. This foiled initial expectations that they would serve as fora of state–civil society collaboration in response to the problem of youth gangs in Managua.

   With the rapid eclipse of NGO interest, the district Prevention Commissions were unable to attract any but the most meagre resources for proposed neighbourhood interventions. Until campaigning for national elections began in 2001, the central government refused to earmark separate funds for the Commissions. Nor was international assistance procured, which left the Commissions entirely dependent on the over-stretched budgets of municipal government departments. With no additional resources for joint activities, participation of individual government representatives attached to the Prevention Commissions rapidly diminished. By the spring of 2001, having lost the initial ardour that accompanied the government's announcement of the Gang Plan, meetings of the various Commissions had become little more than ritualistic affairs attended mainly by junior officials who had limited decision-making authority and who generally offered cursory reports about the activities of their own respective departments. The ineffectual nature of the Commissions was further reflected by an increase in youth gangs and youth violence in Managua, despite the government's heavily promoted Gang Plan.[60]

   During the summer of 2001, however, following a resurgence of media attention to youth crime, and with national elections scheduled for November, the ruling Liberal Alliance Party suddenly announced an immediate injection of $75 000 for the six district Prevention Commissions of Managua. This was accompanied by additional financial support from the US Embassy and the Pan-American Health Organization. Such renewed interest was welcome to Commission members, many of whom had become disenchanted with the Gang Plan. In succeeding months the Commissions once again undertook to initiate a number of activities such as vocational training, counselling and sports tournaments for children affiliated to neighbourhood gangs. Yet, despite this boost to the legitimacy of the Prevention Commissions, it was widely assumed that the pre-election disbursement of funds was essentially a form of vote-catching.[61] At the time of writing, no further special government funding has been allocated to the Commissions. Moreover, while the current government of Enrique Bolaños, inaugurated in January 2002, has vouchsafed the importance of collaboration between the Commissions and NGOs in dealing with urban youth crime, there is so far little indication that there has been substantive dialogue between the Commissions and various civic associations with interests in youth issues. For the time being, therefore, the continued existence of the Commissions appears mainly as a way of signalling the state's intention to alleviate popular fears of urban youth gangs.

   The ineffectiveness of the Gang Plan in satisfactorily addressing the myriad factors of daily risk that confront vast numbers of Managua's youth testifies not

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only to the marginality of children and adolescents as a social policy concern for the Nicaraguan state, but to the residual status of the Code of Childhood and Adolescence as a framework for state policy. Despite passing reference to the need for broad-based consultation and co-operation, the Gang Plan, and the Youth Violence Prevention Commissions that were created under its auspices, were essentially acts of political opportunism. By tacitly supporting repressive police tactics that have winked at judicial due process, and by failing to support the Commissions as vehicles of collaboration with NGOs and community groups keen to tackle problems of at-risk urban youth, the central state has betrayed not only a heavy-handed approach to gang violence, but also a corresponding lack of interest in the Code as a foundation for responding to urban youth crime.

In Nicaragua the obstacles to implementing the articles of the Code are not only fiscal and economic, they also stem from entrenched cultural *morés* and a corresponding political reticence about generating cultural and ideological change. Since the collapse of the Sandinista revolution, Nicaragua has experienced a resurgence of social conservatism in the senior echelons of power. In direct contrast to the socialist orientation and popular liberation philosophy that briefly flowered in the 1980s after the fall of the Somoza regime, a strong traditionalist influence has been reasserted in the structures of governance and in much of civic life as well. The norms of child subservience to arbitrary adult power continue to prevail, reinforced by a public school system that asserts precepts of pupil discipline and unquestioning obedience to authority figures.[62] In this context the Nicaraguan Code, although a significant discursive tool in the armoury of child rights advocates, is largely disembodied from popular consciousness and the dynamics of political intercourse among senior politicians and government officials. The predominant culture remains steeped in the ideology of the 'doctrine of irregular situations' that conceives of children and youth, particularly those who are marginalised by severe poverty, as objects of dependence and arbitrary authority. It is a culture which the governing elite in Nicaragua, despite formal acquiescence to a child rights agenda as set forth by the CRC and the national Code, has so far made little effort to challenge and transform.

In addition, with the NGO sector in Nicaragua benefiting substantially from foreign aid and not averse to levelling criticisms at the state, the central government has grown wary of organisations that have demonstrated a propensity to combine social assistance with political activism. As was exemplified by the peremptory approach which the Youth Violence Prevention Commissions adopted towards prospective non-governmental collaborators, the central state in Nicaragua has been slow to establish relations of parity with civic groups that are sometimes quick to challenge its policies towards urban youth. In order to maintain political equilibrium in a sociocultural environment that continues to harbour strong patriarchal sentiments of social conservatism, governing elites in Nicaragua have been careful to balance formal acceptance of the rhetoric of radical change with the containment of programmes and activities ostensibly orientated towards social change. At the time of writing, under the current government of Enrique Bolaños, despite the recent establishment of a new central

Youth Secretariat, there are no indications that the state in Nicaragua has undertaken to substantially alter the status of children's rights as a peripheral policy issue.

Conclusion: children's rights and the question of state leadership

In enacting the Code of Childhood and Adolescence in 1998, the state in Nicaragua fulfilled an important obligation as a signatory of the international CRC. A charter for the transformation of structural conditions that have historically undermined the psychosocial development of many Nicaraguan children, the Code stands as landmark legislation. It effectively signalled the state's acknowledgement of the injustices of child poverty and its obligation to situate children's rights as a central issue of public policy. Yet there is no mistaking that implementation of the Code presents an enormous challenge for the Nicaraguan government. The conditions of poverty and risk that confront vast numbers of children in Nicaragua are integrally connected to a complex web of economic and political forces that are both national and international in scope, and to an ethos of social conservatism which, notwithstanding the brief revolutionary period of the 1980s, is deeply rooted in the consciousness of governing elites and much of the populace. While the central state is not expected to shoulder the entire burden of ensuring the application of the Code, its role in protecting the best interests of children and in enhancing public awareness of the rights of the child is nonetheless significant.

To date, however, the state in Nicaragua has failed to fulfil this role. To a large extent, as we have discussed, this is because of the combination of a weak national economy and chronic foreign indebtedness, which have forced successive governments to reduce public expenditures. The inevitable curtailment of social services that these cutbacks have generated, coupled with the devastation that Hurricane Mitch wreaked on the country's infrastructure in 1998, have thwarted state capacity to follow through effectively on its symbolic support of children's rights. Yet the state's obligation to protect the social and legal rights of all children is not constrained solely by economic realities over which it has no control. As we have discussed in this paper, there are indications of reluctance on the part of Nicaragua's governing class to accept the sweeping ideological and sociopolitical changes enunciated by the Code. Government responsiveness to urban youth crime and to the rise of organised youth gangs has been conducted largely on the basis of authoritarian perceptions that are rooted in the timeworn 'doctrine of irregular situations'. Government officials are also circumspect about fully collaborating with NGOs and civic groups that are disposed to criticising government policy and challenging the integrity of senior politicians and bureaucrats. Although clearly weakened by serious fiscal constraints, the state's adoption of a crime control approach in responding to popular fears of youth gangs, coupled with its reluctance to collaborate with local civic groups in dealing with youth crime, are indications of a position on children's rights that is essentially a form of hegemonic adjustment. Having formally approved the Code and its inherent discourse of radical social change, the central government is

functioning in a way that has rendered the Code peripheral to the conduct of public policy.

It is clear, therefore, that the impetus for the progressive change needed to enhance children's constitutive rights must continue to emanate from those NGOs, community groups, religious organisations and international aid agencies that loosely constitute the children's rights movement in Nicaragua. Just as concerted civic pressure led to the formulation and legislative approval of the Code in 1998, so too will its implementation depend on organisations and citizens' groups that are committed to heightening popular awareness of children's rights and to working towards the alteration of the baleful social conditions that stunt the healthy development of children. Yet it is by no means certain whether the disparate organs of civil society can maintain the collective political staying power to force continued accommodations of the state. Nor is it clear that they have the necessary organisational capacity to engender broad-based structural change.

As various observers have noted, throughout Latin America NGOs and civic associations have been forceful in standing up to central states and in generating progressive, participatory community actions.[63] In addition, as governments have attempted to downsize social services in order to reduce public expenditures, municipal governments are increasingly compelled to seek co-operative ties with NGOs that are often endowed with both donor funding and professional expertise.[64] Yet this tendency among NGOs and local public officials of trying to fill the void of non-existent or poor quality social services is problematic, for it carries the risk of legitimising the abstention of national governments from assuming a more active role in the protection and promotion of children's rights. This would be unfortunate, for without a democratic central state that is fully engaged in prioritising the rights of all children and other vulnerable sectors of society, a fragmented 'delegative democracy'[65] of resource-poor municipal authorities and externally dependent NGOs may emerge that might in some circumstances be capable of providing social services but would be unable to mobilise a groundswell of popular support for broad structural change. In Nicaragua, as long as the central state has neither the fiscal clout nor the political and ideological capital necessary to enforce the widespread application of the Code, there is little likelihood that the structural conditions underlying child poverty and the marginalisation of vast numbers of Nicaraguan youth will be fundamentally altered.

Notes

1   JL Fernando, 'Children's rights: beyond the impasse', in Fernando (ed), *Children's Rights: Special Edition of the Annals of the American Academy of Political and Social Science*, Thousand Oaks, CA: Sage, 2001, p 12.
2   In Nicaragua, according to the Code of Childhood and Adolescence, youngsters aged 12 years and under are officially regarded as 'children'; those aged 13 to 18 are officially viewed as 'adolescents'.

In contrast, the UN Convention on the Rights of the Child uses the term 'children' to define all individuals under 18 years old.

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4   García-Méndez, *Child Rights in Latin America*.

5   Government of Nicaragua, *Politica Nacional de Desarrollo Integral de la Juventud*, Managua: Ediciones EMCOR, 2001, p 5.

6   Instituto Nicaraguense de Estadistica y Censo, *Encuesta Nicaraguense de Demografia y Salud*, Managua, 2001, p 9.

7   'Nicaragua disminuye mortalidad infantile', *Diario La Prensa* (Managua), 31 January 2003.

8   Ministry of Health/Instituto Nicaraguense de Estadistica y Censo, *Encuesta Nicaraguense de Demografia y Salud*, Managua, 2001, p 9.

9   'Promueven reduccion de la mortalidad maternal', *Diario La Prensa*, 27 July 2002.

10 'Ministro admite dramatica situación de educación', *Diario La Prensa*, 1 February 2003.

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14 MS Grindle, *Challenging the State: Crisis and Innovation in Latin America and Africa*, Cambridge: Cambridge University Press, 1996, p 3.

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16 T Clayton, 'Introduction' to the special issue on the theme of 'Rethinking Hegemony', *Education and Society*, 18 (2), pp 3–9; E Laclau & C Mouffe, *Hegemony and Socialist Struggle: Towards a Radical Democratic Politics*, London: Verso, 1985; and RE Thoryk & PN Roberts, *Hegemony Dismantled or Hegemony Disguised*?, New York: Legas, 1998.

17 F Panizza, 'Beyond "delegative democracy": "old politics" and "new economics" in Latin America', *Journal of Latin American Studies*, 32, 2000, pp 737–763; and C Reilly, 'Public policy and citizen-ship', in Reilly (ed), *New Paths to Democratic Development in Latin America: The Rise of NGO–Municipal Collaboration*, Boulder, CO: Lynne Rienner, 1995, pp 1–27.

18 G O'Donnell, 'Delegative democracy', *Journal of Democracy*, 5 (1), 1994, pp 53–69.

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25 Reilly, *New Paths to Democratic Development in Latin America*.

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[31] Secretaria de Acción Social (SAS), *Evaluacion del Sector Social*, 2001, p 19.

[32] 'Mas estudiantes en las aulas', *Diario La Prensa*, 17 January 2002.

[33] 'Presupuesto social se encoge', *Diario La Prensa*, 2 December 2002.

[34] AI Gershberg, 'Education "decentralization" processes in Mexico and Nicaragua: legislative versus Ministry-led reform strategies', *Comparative Education*, 35 (1), 1999, pp 63–80.

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[37] SAS, *Evaluacion del Sector Social*, p 20.

[38] '860 mil sin classes', *El Nuevo Diario* (Managua), 4 February 2003.

[39] 'La brecha del atraso', *Diario La Prensa*, 2 December 2002.

[40] RF Arnove, 'Education as contested terrain in Nicaragua', *Comparative Education Review*, 39 (1), 1995, pp 28–53; Gershberg, 'Education "decentralization" processes; and SAS, *Evaluacion del Sector Social*.

[41] Interview with the Director of the Institute for Youth and Sport, February 2001.

[42] In 1999 the budget of the Ministry of the Family fell by one-sixth, the result of a deep cut in allocations from government-sponsored national lottery earnings. Further cuts have continued, the most recent being a reduction of around US$2 million to its operating budget of 2000 from that of 2001. Asamblea Nacional, *Ley de Modificación a la Ley Anual del Presupuesto General de la Republica*, *2002*, Managua, 2002.

[43] *Ibid.*

[44] Interview with the Director of the National Inspectorate of Children and Adolescence within the Ministry of Labour, February 2001.

[45] Ministry of Health, *Analisis del Sector Salud*, Manauga: Ediciones Imprimatur, 2000, pp 126–129. An estimated 55% of total aid during this period took the form of grants; much of the remainder was disbursed as low interest loans (*ibid*). In 2000, 78.3% of capital expenditures in all social sectors in Nicaragua (of which education received the largest proportion) originated as loans and grants from international donors. SAS, *Evaluación del Sector Social*, p 6.

[46] 'Barrida en el sector publico', *El Nuevo Diario*, 4 February 2003.

[47] SAS, *Evaluación del Sector Social*, p 6. For the fiscal year 2002, in the educational sector an estimated 95% of capital expenditures and 13% of recurrent expenditures were to be financed through inter-national co-operation. Carcamo, *El Presupuesto General de la Republica*, p 24.

[48] Ministry of Health, *Analisis del Sector Salud*, p 126.

[49] Interview with Director of Ministry of Health, Department of Adolescence, March 2001.

[50] SAS, *Evaluación del Sector Social*.

[51] M Arana 'General economic policy', in Walker, *Nicaragua without Illusions*.

[52] Coordinadora Nicaraguense de la Niñez (CODENI), *Segundo informe de la sociedad civil*; and Sistema Local de Asistencia en Salud, 'Managua', unpublished document, Managua, 2001.

[53] Interview with the former Chief of Police of Managua's District VI, June 2001.

[54] Government of Nicaragua, *Plan de Desarrollo Integral para la Prevencion de la Violencia Juvenil*, Managua, 1999, p 1.

[55] 'Disminuye actividad delictiva en Distrito Seis', *Diario La Prensa*, 10 December 2002.

[56] At the time the Gang Plan was introduced, the municipality of Managua was divided into six large districts that functioned as semi-autonomous zones of public administration.

[57] Government of Nicaragua, *Plan de Desarrollo*, p 4.

[58] *Ibid*, p 2.

[59] Interview with the Director of the Centro de Informacion y Asesoria en Salud (CISAS), May 2001.

[60] Interview with former Chief of Police of Managua's District VI, June 2001. He indicated that the numbers of identifiable youth gangs in the district had risen from 12 to 18 within the period of a little over a year.

[61] The government under Arnoldo Aleman was not averse to using the Prevention Commissions for political propaganda purposes. In the graduation ceremony in August 2000 for 63 youth in District VI who received training certificates, the President's wife was the keynote speaker and used the occasion to campaign on behalf of the government's candidate for Mayor of Managua. Similar political speeches marked the inauguration of a basketball court in District VI for which the Prevention Commission took credit. The position of the District VI Commission co-ordinator has likewise been considered a political asset. The current (third) co-ordinator was a candidate for the Assembly in the national elections of November 2001.

[62] Arnove, 'Education as contested terrain in Nicaragua'.
[63] Grindle, *Challenging the State*; Dewees & Klees, 'Social movements and the transformation of national policy'; and Rutherford, *Civil (Dis)Obedience and Social Development in the New Policy Agenda*.
[64] Reilly, *New Paths to Democratic Development in Latin America*; and Walker, 'Reflections'.
[65] O'Donnell, 'Delegative democracy'.

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